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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Fifty-third session

SUMMARY RECORD OF THE 1299th MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 19 August 1998, at 10 a.m.

Chairman: Mr. ABOUL-NASR

later: Mr. YUTZIS

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The meeting was called to order at 10.25 a.m.

ORGANIZATIONAL AND OTHER MATTERS (agenda item 2) (continued)

Draft decision on the venue of Committee sessions (CERD/C/53/Misc.43)

1. Mr. SHERIFIS explained that a new draft decision concerning the holding of winter sessions in New York was before the Committee, since, in accordance with Rule 25 of its Rules of Procedure and the United Nations Financial Regulations and Rules, the Committee should have taken into account the cost involved in the proposal before taking any decision on the matter at its fifty-second session. He drew attention to paragraph 11 of the relevant programme budget implications statement contained in a facsimile from the Programme Planning and Budget Section, dated 17 August 1998, which showed that the cost of a session in New York was not much more than in Geneva (about an addition $86,300); suggestions had even been made as to how the additional expenditure might be covered.

2. A further development since the fifty-second session was that during her meeting with the Committee, the United Nations High Commissioner for Human Rights had indicated her willingness to support the Committee's request. In the light of the foregoing and the other arguments that were well known to the Committee, such as better representation of smaller States parties in New York and the need for conformity with article 10.4 of the Convention, he hoped that the draft decision would be adopted unanimously.

3. Mr. WOLFRUM said that at the current session the Committee had witnessed the difficulties facing smaller States parties in attending meetings held in Geneva. A case in point was the Niger which, keen as it was to resume its dialogue with the Committee, had had to send a representative who was not a human rights expert from Brussels. For that reason mainly and in the light of the support expressed by the High Commissioner, he endorsed the draft decision.

4. Mr. BANTON recalled that during the fifty-second session a proposal had been put forward by Mr. van Boven to hold the Committee's winter sessions in New York in alternate years. He remained convinced of the rationale behind that proposal and could not endorse the draft decision as it stood, unless it were amended along those lines.

5. The CHAIRMAN, speaking as a member of the Committee, said that he had long been pressing for sessions to be held in New York. Mr. van Boven's proposal, which had been put forward in the latter stages of discussion on the issue at the fifty-second session, without his knowledge, was not in line with article 10.4 of the Convention, whereby meetings of the Committee should normally be held at United Nations Headquarters. The Committee could not be indifferent to the difficulties encountered by smaller States parties in attending meetings in Geneva and to the many written complaints received in that connection. Furthermore, in Geneva the Committee was unable to fulfil its mandate under article 15 of the Convention properly, owing to lack of information on Trustee and Non-Self-Governing Territories. If necessary, he would propose that a roll-call vote be taken on the draft decision, although

that could be avoided if the Committee adopted the decision without a vote and individual members with particular concerns expressed them in the form of reservations.

6. Mr. de GOUTTES said that, although Mr. Aboul-Nasr's arguments were very forceful he personally would be happy to pursue the current practice of holding the Committee's sessions in Geneva. To his recollection, Mr. van Boven's proposal had been made by way of compromise. It would not conflict with article 10.4 of the Convention but would be consistent with the normal practice since Geneva was the regular venue for sessions. He was in favour of reopening the discussion on the proposal put forward by Mr. van Boven at the fifty-second session.

7. Mr. VALENCIA RODRIGUEZ expressed support for the draft decision as it stood, and urged members to adopt it without a vote so that it would have greater effect when submitted to the Fifth Committee of the General Assembly for consideration. Since it would first need to be referred to the Advisory Committee on Administrative and Budgetary Questions (ACABQ) for preliminary consideration, he suggested that members of the Committee should approach members of that body and delegates to the Fifth Committee to ensure its adoption.

8. The CHAIRMAN said that the Committee would rely on Mr. Valencia Rodriguez, who was based in New York, to take the necessary steps along those lines.

9. Mr. van BOVEN said that he would not insist on the reconsideration of his earlier proposal, for two reasons. First, he did not wish the venue of winter sessions to be a cause of division in the ranks of the Committee; and second, the High Commissioner had recently indicated her support for the Committee's request. Although opinions differed on the matter, he shared the view that the draft decision should be adopted without resorting to a vote. Nonetheless, after the decision was taken, he wished to make his position clear on the issue for the record.

10. Mr. HUSBANDS (Secretary of the Committee) observed that the cost estimate prepared by the Programme Planning and Budget Section was based on the decision taken by the Committee at the fifty-second session to hold every second winter session in New York. The draft decision before the Committee might therefore call for a revised estimate.

11. The CHAIRMAN disagreed, pointing out that the cost estimate was for one session only; the question of whether such a session took place every year or every alternate year was therefore irrelevant.

12. Mr. de GOUTTES said that he was not in favour of holding the winter session in New York every year, although he could agree to the compromise solution of every alternate year. Since he did not wish to interfere in any way with a decision taken by consensus, he would prefer to abstain, but sought clarification regarding the procedural implications of his position.

13. The CHAIRMAN stressed that the Committee was not going to vote on the draft decision. However, he understood that if the matter had been put to the vote, Mr. de Gouttes would wish to abstain.

14. Mr. RECHETOV said that since a vote was not being taken on the draft decision, in accordance with standard procedure it would suffice for the comments of Mr. de Gouttes to be reflected in the summary record.

15. The draft decision was adopted.

16. Mr. van BOVEN explained that his proposal to hold alternate winter sessions in New York had been made during the latter stages of the debate on the draft decision at the fifty-second session in a spirit of compromise, given the divergence of views on the issue. He did not agree with the Chairman that his proposal ran counter to article 10.4 of the Convention, since stricto sensu, his proposal would be more in line with that provision than current practice. Furthermore, although there were undeniably good reasons for holding sessions every year in New York, it should be noted that article 10.4 had been drafted at a time when the human rights secretariat had been based in New York, whereas it had subsequently been transferred to Geneva. That being said, he had not insisted on his original proposal for the other reasons he had specified earlier.

17. Mr. YUTZIS said that the most equitable and appropriate decision under the circumstances, given that the Committee had been obliged to meet in Geneva for many years, would have been to hold alternate winter sessions in New York.

18. Mr. BANTON said that although there were good reasons for holding every winter session in New York, it was clear from informal inquiries conducted among delegations to the General Assembly that there would be considerable resistance to any increase in the programme budget. He feared that if the Committee asked for too much it would get nothing. It would therefore have been more prudent to request the holding of every alternate winter session in New York.

19. Mr. de GOUTTES objected to the procedure of the current meeting. He had not been given a proper opportunity to state his views, and had been under the distinct impression that they were shared by other members. Individual members were entitled to express their views, even when they were not shared by the Chairman or some other members of the Committee. He could have requested that a vote be taken but had decided otherwise so as to avoid giving the impression that the Committee was divided on the issue. Had a vote been taken he would certainly have abstained.

20. The CHAIRMAN said that it had not been his intention to prevent Mr. de Gouttes from stating his views; to his recollection, he had had several opportunities to do so. He was fully aware of the motives behind Mr. de Gouttes' and other members' respective positions. He suggested that the discussion on the item should be closed.

21. It was so decided.

Draft decision on the extension of one of the Committee's sessions (CERD/C/52/Misc.47/Rev.1)

22. Mr. SHERIFIS said that in the light of information now available on the implications for the programme budget, it would be necessary to review also the decision taken during the fifty-second session concerning the extension of one session by five working days. The estimated cost of the five-day extension would be US$ 33,200. In conformity with the Committee's Rules of Procedure, a slight amendment would need to be made to the decision, namely the addition of the words: "and having noted the Secretary-General's estimate on the financial implications" after the word "process".

23. The draft decision, as amended, was adopted.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 4) (continued)

Draft concluding observations concerning the second to ninth periodic reports of Gabon (CERD/C/53/Misc.38, future CERD/C/304/Add.58)

Paragraph 7

24. Mr. BANTON proposed the deletion of the adjective "gross" between the words "high" and "school".

25. Paragraph 7, as amended, was adopted.

Paragraph 8

26. Mr. WOLFRUM proposed changing "Pygmean" to "Pygmy".

27. Mr. SHERIFIS asked whether it was the Committee's practice to ask States parties for fuller information on the composition of the foreign community as well as on the ethnic composition of the country. It was not clear how the term "foreign" was understood in paragraph 8. If it included the necessarily transient population of multinational employees, it would be hard for the Government to account for them.

28. Mr. NOBEL (Country Rapporteur) recalled that the report had spoken of a foreign community of 200,000 without specifying further or indicating if they had been included in the census. The Committee had received disturbing information from other sources - the reports of the Office of the United Nations High Commissioner for Refugees on the refugee situation and other reports concerning the refoulement of Rwandan asylum seekers and the expulsion on short notice of tens of thousands of others - that raised the possibility of racial discrimination by the Government against certain foreign nationalities; and he had thought it appropriate to include that concern.

29. The CHAIRMAN, speaking as a member of the Committee, said that without some information from a Government on the matter, the Committee could not express its concern.

30. Noting that most countries did not provide a full account of their demographic composition, he also wondered why in the case of Gabon the Committee's request for that information should come under subjects of concern in section D. He would frame the request in a more positive tone, as a recommendation under section E.

31. Mr. NOBEL (Country Rapporteur) said that he had included the point in section D because the delegation's comments had indicated that the Government wanted to suppress discussion of ethnic problems.

32. The CHAIRMAN, speaking as a member of the Committee, said that many countries preferred not to make distinctions among their various populations because they believed that would create problems for them.

33. Mr. SHAHI said that he agreed that the Committee had not usually pilloried States, by listing the matter under principal subjects of concern, for not providing full information. For the sake of consistency, paragraph 8 should be redrafted and moved to the section containing recommendations. Different responses had been received over the years from different countries on the ethnic issue, and the Committee had always proceeded with circumspection. Among African countries, for instance, it was not uncommon to consider that ethnic distinctions should be downplayed, because once they had become independent States, they needed to consolidate themselves as nations.

34. Mr. BANTON said that paragraph 8 and paragraph 13, which came later under section E, should be considered together, and that the wording of paragraph 13 should be softened to recommend that the State party should in its next report provide fuller information on the demographic composition of the population, in the light of the Committee's reporting guidelines. Paragraph 8 could then make the point that it was difficult for the Committee to form an opinion on demographic composition.

35. The CHAIRMAN, speaking as a member of the Committee, said that it did not set a good precedent to begin by expressing concern about a lack of information. There were much more serious subjects of concern.

36. Mr. NOBEL (Country Rapporteur) said that what was meant by lack of information needed clarification. In many cases, information was lacking in the country report while much information was available from other sources which, combined with the silence in the report, gave cause for concern. Perhaps a way could be found to distinguish between a situation of that sort and a simple failure to provide adequate information.

37. Mr. BANTON, supported by the CHAIRMAN, said he feared that, if the Committee expressed too many concerns and made too many recommendations, States parties would be discouraged from submitting their next report.

38. Mr. RECHETOV observed that it was correct to say that the Committee expected information from Governments, not from other sources, which might not be reliable. The Chairman's points were well taken: any request for information should come under suggestions and recommendations. The Committee

should be cautious in making inadequate information a subject of concern, because a long list of concerns might, to an outside reader, reflect badly on the human rights situation in a country.

39. The CHAIRMAN suggested that the Committee should defer consideration of paragraphs 8 and 13 until the Country Rapporteur, together with Mr. Banton, had redrafted them.

40. It was so decided.

Paragraph 9

41. Mr. BANTON proposed that the text should be amended to conform to the wording used in the concluding observations on the report of Nepal (para. 11). The word "While" would thus be deleted at the beginning, the verb "welcomes" would be replaced by the phrase ", while noting with satisfaction", the word "it" in the second line would be deleted, and the word "is" would be inserted before "applied" in the last line.

42. Paragraph 9, as amended, was adopted.

Paragraph 13

43. The CHAIRMAN recalled that the Committee had decided to defer consideration of paragraph 13.

Paragraph 14

44. Mr. BANTON proposed the insertion of the word "is" in the last line before the word "applied".

45. The CHAIRMAN observed that the implementation of article 4 of the Convention, dealt with in paragraph 14 under suggestions and recommendations, was a subject of more concern than the issue dealt with in paragraph 8 under the preceding section.

46. Paragraph 14, as amended, was adopted.

Paragraph 15

47. Mr. SHAHI said that while he had no objection to the recommendation in the last sentence that national or ethnic minority associations in the State party should be consulted on their experiences regarding enjoyment of the rights under article 5, he wondered if it would set a desirable precedent. That suggestion ought then to be made to other States as well.

48. Mr. WOLFRUM said that he could see the merits of such a trend, and would prefer to keep the sentence.

49. Mr. NOBEL (Country Rapporteur), supported by the CHAIRMAN speaking in his personal capacity, proposed that the sentence should be deleted, especially considering that the only functioning minority in the country was the French community.

50. Paragraph 15, as amended, was adopted.

Paragraph 16

51. Mr. NOBEL (Country Rapporteur) proposed substituting the word "judicial" for the word "justice" in the first line.

52. Paragraph 16, as amended, was adopted.

Paragraph 20

53. Mr. YUTZIS proposed that the word "suggested" should be replaced by "suggests" and "avail itself" by "may wish to avail itself".

54. The CHAIRMAN, speaking as a member of the Committee, said that he had asked the secretariat to draw up a list of those countries which had actually received technical assistance from the Office of the United Nations High Commissioner for Human Rights, so that recommendations such as the one under discussion could be phrased appropriately. He had no idea, for instance, whether Gabon had requested technical assistance and, if it had, whether it had received it.

55. Paragraph 20, as amended, was adopted.

56. The CHAIRMAN suggested that the Committee should resume its consideration of the draft concluding observations at a later meeting, when a new version of paragraphs 8 and 13 would be available.

57. It was so decided.

PREVENTION OF RACIAL DISCRIMINATION, INCLUDING EARLY WARNING MEASURES AND URGENT PROCEDURES (agenda item 3) (continued)

Draft decision on Bosnia and Herzegovina (CERD/C/53/Misc.39)

58. Mr. NOBEL (Country Rapporteur), introducing the draft decision, said that he had tried to draw up a concise text which took members' concerns into account as far as possible. He could have included many more issues arising from the complex situation in Bosnia and Herzegovina, but he had attempted to keep to essentials. The most important point was the view expressed in the paragraph 8 that the Office of the High Representative for Implementation of the Bosnian Peace Agreement and other international organs should continue to operate in the country for a considerable period of time.

59. He indicated a correction in paragraph 3: the phrase "Office of the Federal Ombudsman" should be replaced by "Office of the Federation Ombudsmen".

60. Mr. Yutzis took the Chair.

61. Mr. ABOUL-NASR said that the draft decision failed to express any concern about the truly grave situation in Bosnia and Herzegovina, which was the daily focus of world attention and concern. Paragraph 1, for example, stated that the Committee was "pleased" that the State party had attended one of its meetings and noted that "important progress" had been made towards peace. The reality in Bosnia and Herzegovina was mass graves and the Government's failure to cooperate with the International Criminal Tribunal for the former Yugoslavia.

62. Mr. BANTON suggested that a few sentences could be added to the text to reflect Mr. Aboul-Nasr's concern, perhaps at the end of paragraph 1, or as a new paragraph 2.

63. Mr. WOLFRUM suggested that a small working group should be convened to revise the text and report back to the Committee later.

64. Mr. RECHETOV said that it hardly seemed necessary to set up a working group, which would necessarily exclude a large proportion of Committee members, including those who originated from the region under discussion, when the Country Rapporteur had already done a very competent job.

65. Mr. NOBEL (Country Rapporteur) said that the Committee's earlier decisions on Bosnia and Herzegovina, listed in paragraph 1, made its concerns clear. The paragraph also stated that the situation had been examined under the Committee's early warning and urgent procedures. However, he had no objection to including a more explicit expression of concern if the Committee so wished.

66. Mr. van BOVEN said that there had been some progress in the Committee's relations with the Government of Bosnia and Herzegovina, and it was important to acknowledge that step forward. The situation was complicated because it involved not only the Government of the State party, to which the Committee should formally address itself, but also other elements not necessarily under the State party's control, such as the Republika Srpska, which had refused to cooperate with the International Criminal Tribunal.

67. The CHAIRMAN suggested that, to save time, a working group consisting of Mr. Nobel, Mr. Banton, Mr. Aboul-Nasr and himself should revise the text of the first paragraphs of the draft decision, as necessary, and submit the new version to the Committee at a later meeting.

68. It was so decided.

Paragraph 5

69. Mr. DIACONU said that the phrase "special investigation" implied that the Committee was advocating a legal inquiry into the situation of the Roma population, which was surely not the case.

70. Mr. van BOVEN said that the word "fate" was too strong, and suggested the wording: "... the conditions and the situation of the Roma population in Bosnia and Herzegovina require urgent attention and special measures by the authorities ...".

71. Mr. RECHETOV suggested "living conditions".

72. Mr. NOBEL (Country Rapporteur) said that he had discussed the situation informally with Mr. Dienstbier, the new Special Rapporteur of the Commission on Human Rights on the situation of human rights in Bosnia and Herzegovina, the Republic of Croatia and the Federal Republic of Yugoslavia. The Roma population of Bosnia and Herzegovina, numbering some 15,000 people according to the official census, but estimated by other sources at 50,000 to 60,000, seemed to have disappeared without trace. Although no reliable reports of disappearances had been received, the whereabouts of those people was not known. The local Helsinki Committee had also dealt with a number of cases concerning the Roma. He had, therefore, deliberately used the wording "the fate and the situation of the Roma population". It was not a question of their living conditions: the question was whether they were alive at all.

73. Mr. SHAHI agreed that, in that case, the word "fate" was appropriate.

74. Mr. van BOVEN said that he had been unaware of the concerns described by Mr. Nobel and agreed that the word "fate" should be retained. His amendment would thus read: "... the fate and the situation of the Roma population ... require urgent attention and special measures by the authorities ...".

75. Paragraph 5, as amended, was adopted.

Paragraph 6

76. Mr. NOBEL (Country Rapporteur) said that "solely on grounds of their ethnic identification" should be placed after "persons who".

77. Mr. WOLFRUM said that the wording needed to be more cautious since, for all the Committee knew, the laws had already been amended.

78. Mr. RECHETOV pointed out that within the United Nations, the word "entities" had negative connotations.

79. Since the paragraph mentioned only legislation that could be used to prosecute persons who had avoided conscription or deserted, by inference the Committee was condoning all other legislation in force.

80. Mr. van BOVEN said that the representative of Bosnia and Herzegovina had in fact referred to the State and "entities". However, Mr. Rechetov had a point. "The State and its constituent components" would be more appropriate.

81. Mr. NOBEL (Country Rapporteur) said that, as recently as in resolution 1998/79, section II, paragraph 9 (c), the Commission on Human Rights had reiterated its call to the Republika Srpska immediately to amend its law to provide amnesty for persons who had avoided conscription or deserted. The report of the Helsinki Committee on its activities in 1997

stated that it had provided legal aid in a considerable number of cases, including for deserters. The report also said that deserters were being actively tracked down and that the authorities in the Republika Srpska and their counterparts in Belgrade were working together to find them.

82. Mr. WOLFRUM said that the German courts no longer felt that the argument that a person would be punished for having avoided conscription in Bosnia and Herzegovina or deserted was a valid reason for granting asylum, which would imply that they had information that the law on prosecution had been abolished or was no longer in force.

83. Mr. RECHETOV said that, given the doubts as to the legislative situation, the Committee should avoid falling into the trap of referring to laws that might not exist or had been amended.

84. Mr. SHERIFIS said that he agreed that some reference to the laws should be included but that the wording could be less explicit.

85. Mr. BANTON proposed that "the relevant existing laws" should be replaced by "any relevant existing laws".

86. Paragraph 6, as amended, was adopted.

Paragraph 7

87. Mr. NOBEL (Country Rapporteur) said that "importance" should be inserted after "paramount".

88. Mr. DIACONU suggested that the first sentence should read:

> "Further, these entities should, by all means, encourage the safe and voluntary repatriation of refugees and the return of displaced persons to their places of origin with a view to counteracting the effects of the war and the so-called 'ethnic cleansing', which is ...".

89. Mr. WOLFRUM said that he was not happy with the third sentence since the effects of ethnic cleansing and war would not be counteracted if countries of asylum were encouraged not to repatriate refugees from Bosnia and Herzegovina. Although the United States of America was against returning the refugees, many European countries, including Germany, felt differently.

90. Mr. RECHETOV said that the reference to ethnic cleansing did not need to be prefaced by "so-called" which made it sound as if there was some doubt as to whether it had taken place.

91. Mr. de GOUTTES suggested that the third sentence should read:

> "In this context, the Committee is of the view that countries of asylum should examine carefully their repatriation programmes for refugees."

92. Mr. NOBEL (Country Rapporteur) said that he did not fully agree with the point made by Mr. Wolfrum. It was important to give a warning to countries, especially in western Europe, that were pressing on with the return of refugees from Bosnia and Herzegovina without there being any guarantees for their safety.

93. The CHAIRMAN said that he was surprised that members of the Committee were still airing differences on substantive issues at that stage, and had not discussed their views with the Country Rapporteur before the draft decision had been prepared.

The meeting rose at 1 p.m.